

then such child would be entitled to such free tuition while attending such state universities or colleges.

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OFFICIAL OPINION NO. 22

March 27, 1945.

Hon. Fern E. Norris,  
Reporter Supreme and Appellate Courts,  
State House,  
Indianapolis, Indiana.

Dear Madam:

I have your letter of March 16th in which you ask the following questions:

“Whether or not the reporter should replace a volume or volumes of Indiana Reports and Appellate Court Reports at no cost in instances where the volumes have been furnished free to circuit courts or other agencies designated by statute where the reason for the replacement is that the volume or volumes have been lost or destroyed. If the answer to this question should be in the negative generally, would the fact that the volume or volumes were destroyed by fire be an exception to the rule? If the answer should be in the affirmative, then would the duty to replace include reprinted volumes?”

“Should the Reporter’s office furnish courts newly-created by the 1945 General Assembly with complete sets of the reports to date? If the answer to this question be in the affirmative, should reprinted volumes be included?”

Your first question is whether or not the Reporter of the Supreme and Appellate Courts should furnish replacements without charge to courts and agencies entitled to free volumes of the Supreme and Appellate Court reports in the first instance. Section 7 of Chapter 170, p. 389 of the Acts of 1891, as amended (49-1622 Burns’ R. S. 1933, Pocket Supplement), provides for free distribution of copies of the Supreme and

Appellate Court reports to various courts, libraries and agencies. As pointed out in an opinion of the Attorney General on July 23, 1943, to the Reporter of the Supreme and Appellate Courts (1943 O. A. G. 472) the free distribution contemplated by that section applies to the original printing of the reports. There is no provision in the Act for replacement of volumes which have been distributed free of charge and have been later lost or destroyed.

As a state public officer the reporter has only such powers and authority as are given by statute and those necessarily implied.

State, *ex rel.* v. Goldthait (1909), 172 Ind. 210, 216, 217;

State, *ex rel.* v. Home-Brewing Company (1914), 182 Ind. 75, 91, 92;

The State v. The Portsmouth Savings Bank (1886), 106 Ind. 435, 451;

Department of Insurance v. Church Members Relief Association (1940), 217 Ind. 58, 60;

43 Am. Jur., Public Officers, Section 250.

I find no express or implied authority, which would empower the reporter to make replacements free of charge. Consequently, with the exception stated in the paragraph below, there would be no such authority.

Your second question is whether replacements may be made in the event volume or volumes which were originally furnished free of charge have been destroyed by fire. The only provision for replacement of volumes destroyed by fire is found in Section 1, Chapter 204, p. 491, of the Acts of 1925 (49-1627 Burns' R. S. 1933). That section reads as follows:

"Whenever the judge of the circuit court of any judicial circuit of the State of Indiana, shall certify in writing under the seal of said court to the secretary of state of the State of Indiana, that the reports of the Indiana State Supreme Court and the reports of the Indiana Appellate Court and the session laws of the General Assembly of the State of Indiana, or either of them, of any county in the judicial circuit of said judge, has (have) been destroyed by fire, and that such

county at that time has no such reports or session laws on account of such destruction by fire, then the said secretary of state, shall, upon the receipt of such certificate, deliver to such county, free of charge, one (1) set of said reports, and such session laws as may be requested, which shall be for the use of the circuit court of such county, if, at the time of receiving such certificate, the secretary of state has such sets of said reports or any copies of the session laws in his possession which belong to the State of Indiana and of which no other disposition has been made."

It is clear that the Legislature in enacting that chapter considered only complete destruction of a full set of reports. Nothing is said in the section concerning replacement of a volume or volumes in a set of Supreme or Appellate Court reports. I am consequently of the opinion that the replacement of a single volume or several volumes less than a full set is not authorized by Chapter 204.

With regard to any duty to furnish reprinted volumes, Section 10 of Chapter 170, p. 389 of the Acts of 1891 (49-1625 Burns' R. S. 1933) provides as follows:

"Whenever the copies of any volume of the reports published by the state shall be exhausted so that the secretary of state shall have no more than twenty (20) for sale at retail, it shall be the duty of the commissioners of public printing and binding to cause, in the mode required by law, a new edition of two hundred and fifty (250) copies to be printed from the said stereotype plates and bound *and put on sale by the secretary of state at the price fixed as aforesaid.*"  
(Emphasis ours.)

In an opinion of the Attorney General dated July 23, 1943, (1943 O. A. G. 472) it was said that in view of the provisions of the above quoted section the reporter was not authorized to make free distribution of volumes reprinted.

Subsequent to that opinion it was suggested by the Attorney General that a complete recodification of the laws concerning distribution of Supreme and Appellate Court reports was desirable. This need is still apparent.

Your fourth question is whether the reporter's office should furnish newly-created courts with complete sets of reports. Section 7 of Chapter 170, above cited, (49-1622 Burns' R. S. 1933, Pocket Supplement) provides:

"\* \* \* Such volume so obtained, (referring to reports not published by the state and obtained by exchange) together with the volumes published by the state, necessary to make complete sets, or to complete incomplete sets, may be distributed free of charge to the several circuit, superior, criminal and probate courts \* \* \*." (Parenthesis ours.)

As pointed out above, the Legislature in this section was referring to the original printing and volumes obtained by exchange of volumes in the original printing. It does not include reprinted volumes. I am, therefore, of the opinion that in so far as volumes are available from original printings or exchanges, they may be furnished free of charge to the newly-created courts.

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OFFICIAL OPINION NO. 23

March 27, 1945.

Hon. Milton Matter, Director  
Indiana Department of Conservation,  
State House,  
Indianapolis, Indiana.

Dear Sir:

This is in reply to your recent request for an opinion as to the status of the Indiana State Museum.

You ask to be advised as to the department of the state government that has jurisdiction over the museum and its future development.

It is unnecessary to go into the question as to how the state museum idea originated, or where the various specimens came from, or to whom they were originally given. Many specimens were collected by former state geologists, and some articles such as the J. H. Vajen heirs collection, were